

**PROPOSAL TO THE**

**AVIATION RULEMAKING ADVISORY**  
**COMMITTEE**

**AND**

**FEDERAL AVIATION ADMINISTRATION**

**FAR PART 135.263 AND 135.267**  
**UNSCHEDULED OPERATIONS**

By consent of the Labor/Pilot members of the Flight/Duty/Rest Requirements Working Group.

PROPOSED PREAMBLE TO CHANGES OF FAR'S  
135.263, AND 135.267

**SUMMARY:** This final rule amends flight time limitations and rest requirements for flight crewmembers engaged in unscheduled air transportation. The rule is based on recommendations of the Aviation Rulemaking Advisory Committee's Flight/Duty/Rest Requirements Working Group composed of persons who represent the interests affected by the flight time rules. The rule clarifies certain requirements that have had voluminous interpretations and changes wording within the existing rules to comply with the original intent of the rule-making that occurred on October 1, 1985.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 15, 1992 the Federal Aviation Administration announced the establishment of a Flight Crewmember Flight/Duty/Rest Requirements Working Group in Volume 57, Number 115, page 26685 of the Federal Register. The Working Groups task was: "To determine whether regulations pertaining to air carrier flight crewmember, flight, duty, and rest requirements are consistently interpreted and understood by the FAA, air carriers, and pilots. Evaluate industry compliance/practice regarding scheduling of duty, reserve, and rest periods and reports of excessive pilot fatigue as a result of such scheduling. If appropriate, develop recommendations for advisory material and/or a regulatory revision."

Through many meetings of the working group in 1992 and 1993, it was quickly determined that flight, duty, and rest requirements were misunderstood by the industry and various offices within the FAA. The group did find that the interpretations issued by the Chief Counsel's office of the FAA were consistent in regards to the areas of concern, but in one case, not consistent with the intent of the 1985 changes to certain rules.

The working group determined that the only way to correct the misunderstandings of the current rule, and to correct the interpretations issued by the FAA Chief Counsel, was to make a regulatory revision.

**Intent of the Rule**

The Working Group quickly identified two areas of misunderstanding and misinterpretation. Therefore, the group focused on the following objectives:

1. To correct the language in the current rule that allows a "never-ending" duty period.

2. To clarify existing regulations pertaining to rest requirements as they apply to flight crewmembers performing a standby or reserve function with a present responsibility for work, if called, by the certificate holder.

#### Comments on the Proposed Rule

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#### The Rule

135.263(b) was changed to allow the exclusions found in the proposed 135.267(h). It was not changed in a manner that would cause a change to any existing 135.265(Scheduled) rule.

135.263(d) was changed only to eliminate gender specific terminology.

135.267(a) was changed to provide flight time limitations that are more in line with current fatigue science and to be more in line with the flight time limits of Part 121 and 135.265.

135.267(b) was changed so as to include any type of assigned flights to the daily flight time limitations found in this paragraph.

135.267(c)(4) was added to provide for unforeseen in-flight delays that might otherwise cause a violation of present regulations.

135.267(d) was changed to eliminate the "never-ending" possible duty period by changing the word planned to the word actual.

135.267(d)(1) was added to provide for unforeseen in-flight delays that might otherwise cause a violation of the changed regulations.

135.267(f) was changed to provide two options for certificate holders to use in providing rest periods designed to combat cumulative fatigue.

135.267(g), (h), and (i) was removed and replaced with specific language addressing crewmembers performing a reserve or standby duty at the direction of a certificate holder.

#### Section by Section Discussion

Under the existing 135.263(b), no form of duty, including reserve or standby in which a crewmember has a present responsibility for work, if called could be performed during any required rest period. It is the intent of the change in this rule to allow very

limited exceptions to this rule, specifically as to it's applicability to reserve and standby crewmembers. Without this exception, the Chief Counsel interpretations of rest and duty as applied to standby and reserve would continue to be correct in there most limiting application.

The change to 135.263(d) was made solely to correct the gender specific word "he" to the wording "he/she".

135.267(a) was changed in two ways. First, the language of paragraph a was changed to include any other flight time directed by the certificate holder to count towards the cumulative total of 135.267(a)(1) and (2). This would include Part 91 flights assigned by the certificate holder. This change is a recommendation of the NTSB as well .

135.267(b) was changed to insure that all flying done on behalf of a certificate holder is included in the daily flight time limits. As in paragraph (a), this change insures that excessive flight times are not possible by a certificate holder assigning "tail end ferrys" to an already long day. A recent report by the NTSB of an accident recommends to the FAA as a Class II Priority action, that this change be made.

135.267(c)(4) was added because under the specific regulation found in 135.267(c) a duty period could not be any longer than 14 hours under any circumstance. Although 135.267(c) was drafted so as to provide certain types of certificate holders to operate in a manner inconsistent with flight time limitations found in 135.267(b), it failed to allow for any deviation from the regulation's "duty period of no more than 14 hours." In much of the discussion during working group meetings, air carriers as well as flight crewmembers found that under the strictest interpretations, a crewmember who experienced an unforeseen in-flight delay (unforecast weather, destination airport closure, diversion due to mechanical malfunctions, etc.) would either have to land the aircraft at an unscheduled location or violate the regulations provision of "no more than 14 hours." By adding 135.267(c)(4), a crewmember who is delayed during a flight that would normally terminate within the limitations of the rule could continue the flight to destination or alternate in the event of an unforeseen in-flight delay that would cause the crewmember to exceed the 14 hour duty limit. However, it is the intent of this rule that it can only be applied to an actual in-flight delay and only to the flight segment that the delay occurred. Any delays to earlier flights scheduled by the carrier cannot be used to continue further scheduled flights beyond the 14 hour limit. Additionally, any flight that departs close to the 14 hour limit must reasonably be expected to terminate within the 14 hour limit in order to use the exclusionary language found in 135.267(c)(4).

Additionally it was found that there may be some misunderstanding of the concept of 135.267(c) and its applicability to operations

under the unscheduled rules of Part 135. 135.267(c) was created during the 1985 Regulation by Negotiation meetings and was given the approval of the FAA as a very limiting regulation. The purpose of 135.267(c) was to give operators who "regularly

assigned" their crewmembers to the same duty and rest periods day after day a method in which they could have flight time in excess of the 8 or 10 hours required by paragraph (b). The key to this regulation is found in the term "regularly assigned duty period". It was the intent of the negotiators and the FAA that regularly assigned duty period would mean that a crewmember begins and ends his duty period at the same time each day. This also creates a rest period that begins and ends each day at the same time. This would create a circadian rhythm that would tend to allow deviations of the flight time limitations found in paragraph (b) without compromising safety of flight. Further, the FAA has held that a crewmember must be assigned these "regularly assigned duty periods" for at least 4 consecutive weeks in order to be able to use the limitations found in 135.267(c). A certificate holder that assigns duty periods daily, or that assigns crewmembers to duty periods that constantly change their start times, or assign crewmembers rest periods that begin at different times each day or are of varying lengths, can not use the provisions of 135.267(c). Therefore, it would be very difficult for on-demand unscheduled operators to comply with paragraph (c), and would be required to comply with the provisions found in 135.267(b).

135.267(d) was drafted in 1985 so as to create an implied duty limit of 14 hours as was shown under 135.267(c). Unlike 135.263(d) which provides for extensions to flight time limitations due to circumstances beyond the control of the certificate holder, no such exclusionary language was specifically drafted to allow extension of the implied 14 hour duty limit. Some of the working group members were on the 1985 Advisory Committee that drafted the current regulation, and it was stated that it was the committee's intent to create a 14 hour maximum duty by virtue of the "look-back" provisions of rest requirements found in this rule. Unfortunately, this intent was over-ruled by the FAA's Chief Counsel in many interpretations issued over the last 8 years. The Chief Counsel found that the 10 hour rest period found in the 24 hour "look-back" was based on the "planned" completion time of an assignment. Through many discussions during working group meetings, this interpretation was found to create absurd duty lengths. Many occurrences of 18 or more hour duty periods were related by flight crewmembers because of this interpretation. Under the interpretation, a flight delayed 7 hours because of mechanical malfunctions could nevertheless be performed even if it would cause a crewmember to have 21 or more hours of continuous duty. Further, under the Chief Counsel's interpretations, even if the delay was on the first leg of a series of flights, all of the "scheduled" flights could be completed. Additionally, late arriving passengers was ruled to be beyond the control of the certificate holder and

would not be cause to discontinue a flight due to rest requirements. In all of the Chief Counsel's interpretations of this rule, the key language of the existing rule was the planned completion time of the assignment. The change made in this rule was simply to change the word planned for the word actual. This

would create the conditions originally intended in 1985 by making the 14 hour implied duty limit a maximum. This would further cause certificate holders to schedule end of day flights realistically and to provide a protective buffer to the 14 hour duty window. The working group clearly indicated that the open-ended duty period created by the mis-wording of this rule was contrary to flight safety. Also NASA fatigue research scientists on the working group stated that the conditions in which unscheduled flight crewmembers work (circadian disruption, inconsistent sleep and work patterns, etc.), clearly called for a maximum duty period between rest periods. Additionally, this paragraph's reference to 135.267(b) requires that all assigned flights, including those under FAR Part 91 that are directed by the certificate holder be completed within the lookback provisions of this paragraph.

135.267(d)(1) was added to give the same in-flight protection as discussed in the addition of 135.267(c)(4).

135.267(f) was changed because the current rule allowing for 13 days off in any quarter was often abused by certificate holders. The rule allowed for the very real ability of the certificate holder to use a flight crewmember for up to 77 consecutive days, 14 hours each day, with only 10 hours rest. This concept is simply not in accordance with any rational thought on sleep disorders and fatigue research. And, when applying this rule to the "no schedule" concept of on-demand operations, could not stand up to scientific analysis, much less, common sense. The proposed rule allows the certificate holder to provide either 24 consecutive hours off in any 7 days or they must provide 72 consecutive hours off in any 14 days. This gives the unscheduled operator the flexibility to use a flight crewmember for up to 11 consecutive days with three days off, or by providing one day off during every 7 days. This is also in concert with the "one level of safety" concept that was discussed during working group meetings and by Mr. Broderick.

135.267(g) was created to clarify the rest requirements of crewmembers who are directed by the certificate holder to be in a status of readiness to perform flight duty and to remain contactable for such an assignment. The FAA's Chief Counsels have issued interpretations for over 40 years indicating that the FAA considered either actual work for an air carrier or a present responsibility for work, should it arise, to be a duty that cannot be counted towards the rest requirements of the regulations. Further, they have indicated that any required rest period must be prospectively assigned and be free of any

restraint by the certificate holder. In the 1985 changes to the regulations, the FAA made minor changes to the wording of the new rules to insure that the word duty could not be confused for flight time as in the Ozark Airlines case in 1974. These changes further indicated the FAA's belief that any form of duty could not be considered rest. Throughout many hours of discussion, working group members related scenarios which now occur in which flight crewmembers are operating aircraft after being without sleep for 20 or more hours. This happens because of a lack of understanding of the rest requirement rules as they apply to reserve or standby crewmembers. Additionally, FAA field personnel were also found to be lacking in the understanding of these requirements, and as such, a limited, at best, enforcement of FAA requirements was found. In order to eliminate the possibility of flight crewmembers operating aircraft without adequate prospective rest, standby or reserve duty was interpreted to be inconsistent with proper rest requirements. Once again, NASA fatigue research scientists found that a "predictable and protected" rest period was necessary each day if a crewmember was to be adequately rested for flight duty. They found that a prospective rest requirement was even more necessary for flight crewmembers operating in the unscheduled environment with the associated circadian disruptions.

135.267(g) defines a crewmember who has been assigned to a standby reserve function at a location specified by the certificate holder (hotel, flight office, etc.), or who has an assigned responsibility to report to work for the air carrier within 2 hours of notification. Any time spent in this form of reserve would not be considered rest, and any subsequent flight assignment could not use any portion of this reserve to meet the rest requirements found in 135.267(d). Once a crewmember has had 14 hours of standby reserve, that crewmember may not accept an assignment for flight without an intervening rest period of no less than 10 consecutive hours.

135.267(h) was created to address a slightly less restrictive form of reserve titled "on-call reserve". An on-call reserve crewmember is assigned by the certificate holder to remain contactable off airport (hotel, motel, home, or by telephonic device) and who is required to report for work with the certificate holder in more than two hours from initial contact. A crewmember required to be at an airport cannot be considered an on-call reserve.

135.267(h)(1) creates a slightly longer duty period available for a crewmember who performs on-call reserve. Once a crewmember is assigned on-call reserve, he may be called at any time during the first 14 hours of such reserve duty and assigned a flight or other duty. The 18 hour limitation found in this paragraph is intended to allow a flight crewmember to be used in actual duty for up to 18 hours from the beginning of the reserve assignment,

however, if the crewmember is called to duty at the very beginning of an on-call reserve assignment, he may not perform an actual duty period of more than 14 hours. An example of this would be when a crewmember is called at the very first moment of on-call reserve. The crewmember would then report to the location specified by the certificate holder no sooner than two hours later. He then could only be on duty for 14 more hours. This would total sixteen hours from initial contact and remain in the 18 hour limits of this paragraph. If a crewmember was called later in the on-call reserve assignment, he may report to the location specified by the certificate holder and then perform any other duty for up to 18 hours of combined reserve plus assigned duty, as long as the assigned duty does not exceed 14 hours.

135.267(h)(2) means that if a crewmember is performing on-call reserve and has not been called by the 14th hour of such reserve, the crewmember must then be given a 10 or more hour rest period before accepting a duty assignment or additional reserve assignment. If a flight crewmember is not called by hour 14 of the on-call reserve, he could not report to the specified location any sooner than the 16th hour and would then only be useable for a maximum of 2 hours. This would rarely be useful to a certificate holder, considering pre-flight and postflight duties would further reduce the flight availability. This would however, insure that a normal sleep cycle and circadian rhythm is maintained if the crewmember is not called to duty.

135.267(i) A flight crewmember must be prospectively (in advance of the reserve assignment commencing) assigned either "On-Call" or "Standby" reserve, and once either form of reserve commences, may not be switched to the other form of reserve (i.e. On-Call to Standby or Standby to On-Call) without an intervening rest period of at least 10 consecutive hours. This precludes a certificate holder using a crewmember for 4 hours of 2 hour call out and then switching the crewmember to immediate call out for the last 14 hours.



SUBPART F - FLIGHT CREWMEMBER FLIGHT TIME, DUTY PERIOD  
LIMITATIONS, AND REST REQUIREMENTS

135.261 APPLICABILITY

Sections 135.263 through 135.271 prescribe flight time, duty period limitations, and rest requirements for operations conducted under this subpart.

- (a) 135.263 applies to all operations under this subpart.
- (b) 135.265 applies to:
  - (1) Scheduled passenger-carrying operations except those conducted solely within the State of Alaska. "Scheduled passenger-carrying operations" means passenger-carrying operations that are conducted in accordance with a published schedule which covers at least five round trips per week on at least one route between two or more points, includes dates or times (or both), and is openly advertised or otherwise made available to the general public, and
  - (2) Any other operation under this part, if the operator elects to comply with 135.265 and obtains an appropriate operations specification amendment.
- (c) Section 135.267 and 135.269 apply to any operation that is not a scheduled passenger-carrying operation and to any operation conducted solely within the State of Alaska, unless the operator elects to comply with 135.265 as authorized under paragraph (b)(2) of this section.
- (d) Section 135.271 contains special daily flight time limits for operations conducted under the helicopter emergency medical evacuation service (HEMES).

135.263 FLIGHT TIME AND REST REQUIREMENTS: ALL CERTIFICATE HOLDERS

- (a) A certificate holder may assign a flight crewmember and a flight crewmember may accept an assignment for flight time only when the applicable requirements of Parts 135.263 through 135.271 are met.
- (b) Except as provided in 135.267(h), no certificate holder may assign any flight crewmember to any duty with the certificate holder during any required rest period.
- (c) Time spent in transportation, not local in character, that a certificate holder requires of a flight crewmember and provides to transport the crewmember to an airport at which he or she is to serve on a flight as a crewmember, or from an airport at which he or she was from duty to return to his or her home station, is not considered part of a rest period.
- (d) A flight crewmember is not considered to be assigned to flight time in excess of the flight time limitations if the flight segment to which he or she is assigned normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder or flight crewmember (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the planned flight time.

135.267 FLIGHT TIME, DUTY PERIOD LIMITATIONS AND REST REQUIREMENTS:  
UNSCHEDULED ONE- AND TWO-PILOT CREWS

- (a) No certificate holder may assign any flight crewmember, and no flight crewmember may accept an assignment for flight time under any part of the Federal Air Regulations on behalf of any certificate holder, if that crewmembers total flight time, when added to any other commercial flying will exceed:
  - (1) 1200 hours in any calendar year.
  - (2) 120 hours in any calendar month.
- (b) Except as provided in paragraph (c) of this section, during any 24 consecutive hours the total flight time of any assigned flights when added to any other commercial flying by that flight crewmember may not exceed-
  - (1) 8 hours for a flight crew consisting of one pilot; or
  - (2) 10 hours for a flight crew consisting of two pilots.
- (c) A flight crewmember's flight time may exceed the flight time limits of paragraph (b) of this section if the assigned flight time occurs during a regularly assigned duty period of no more than 14 hours and-
  - (1) If this duty period is immediately preceded by and followed by a required rest period of at least 10 consecutive hours of rest;
  - (2) If flight time is assigned during this period, that total flight time when added to any other commercial flying by the flight crewmember may not exceed-
    - (i) 8 hours for a flight crew consisting of one pilot; or
    - (ii) 10 hours for a flight crew consisting of two pilots; and
  - (3) If the combined duty and rest periods equal 24 hours.
  - (4) It shall not be a violation of paragraph (c) if at the actual time of departure, the flight was expected to, and normally would, terminate within the limitations of paragraph (c), but due to an unforeseen in-flight delay, could not be completed within the requirements of paragraph (c).
- (d) Except as provided in (d)(1), each assignment under paragraph (b) of this section must provide for at least 10 consecutive hours of rest during the 24 hour period that precedes the actual completion time of the assignment.
  - (1) It shall not be a violation of paragraph (d) if at the actual time of departure, the flight was expected to and normally would, terminated within the limitations of paragraph (d), but due to an unforeseen in-flight delay, could not be completed within the requirements of paragraph (d).
- (e) When a flight crewmember has exceeded the daily flight time limitations in this section, because of circumstances beyond the control of the certificate holder or the flight crewmember (such as adverse weather conditions), that flight crewmember must have a rest period before assigned or accepting an assignment for flight time of

at least-

- (1) 11 consecutive hours of rest if the flight time limitation is exceeded by not more than 30 minutes;
- (2) 12 consecutive hours of rest if the flight time limitation is exceeded by more than 30 minutes, but not more than 60 minutes, and
- (3) 16 consecutive hours of rest if the flight time limitation is exceeded by more than 60 minutes.

(f) Each certificate holder shall relieve each flight crewmember from all duty for at least:

- (1) 24 consecutive hours during any 7 consecutive calendar days, or;
- (2) 72 consecutive hours during any 14 consecutive calendar days

(g) A "Standby Reserve" is a flight crewmember who is required:

- (1) To be at a location specified by the certificate holder: or,
- (2) To report to a location specified by the certificate holder in less than 2 (two) hours from time of contact by the certificate holder.

Time spent subject to (1) and/or (2), above, is considered on duty.

(h) An "On-Call Reserve" is a flight crewmember who is required to report to a location specified by the certificate holder in more than 2 (two) hours from initial contact; and,

- (1) The total sum of On-Call reserve when added to any other duty shall not exceed 18 hours, or 14 hours of actual duty, whichever occurs first; and,
- (2) A flight crewmember who has performed On-Call reserve for 14 hours without being called for any other duty shall be given a rest period of no less than 10 consecutive hours before being assigned to any other duty or reserve.

(i) Certificate holders must prospectively assign flight crewmembers to a specific reserve assignment (Standby or On-Call), and once so assigned, may not switch the type of reserve assigned without an intervening rest period of at least 10 consecutive hours.